

7A Am. Jur. 2d Automobiles § 133

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Automobiles and Highway Traffic

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III. Licensing, Taxation, and Registration

B. Drivers or Operators

4. Suspension, Revocation, and Reinstatement of Licenses

b. Grounds for Suspension or Revocation

(3) Refusal to Submit to Intoxication Test

(c) Notification of Right to Refuse Test; Right to Counsel

§ 133. Notification of right to refuse test for intoxication and right to counsel; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  144.1(1.11), 144.1(1.20)

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[Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal](#), 28 A.L.R.5th 459

Under most statutes, a suspension or revocation of an operator's license for refusal to submit to an intoxication test is unwarranted unless the licensee was warned, at the time of the request to take the test, of the consequences of his or her refusal to do so. Under such statutes, the driver must be clearly warned that the mere refusal to take the prescribed test would be the cause of revocation or suspension of the license,¹ and that a subsequent conviction or dismissal of the charge of driving while intoxicated is immaterial.² When the arresting officer informs the driver that refusal to submit to chemical testing could result in the suspension of the person's driver's license, due process does not require that the arresting officer inform the driver of all the consequences of refusing to submit to testing; the officer has made it clear that refusing the test is not a "safe harbor," free of adverse consequences.³ Police officers are also not required to spend time either cajoling an arrestee or waiting for him or her

to change his or her mind, in context of statute requiring a one-year license suspension if a motorist arrested on reasonable grounds for driving under the influence (DUI) refuses to submit to a chemical test.⁴

Drivers who are prosecuted for the offense of refusing to submit to a breath test and who claim that they were not informed of the consequences of refusing to submit to a breath test because they do not speak or understand English must bear the burden of production and persuasion on that issue.⁵

A license cannot be properly revoked or suspended where the licensee is advised that the test is not mandatory.⁶ In giving this notice, the arresting officer is not required to attempt repeatedly to admonish a person arrested for DUI until the arrestee is willing to listen, despite interruptions and other uncooperative conduct.⁷ In the case of a person who resists arrest strongly enough that assistance is required to detain him or her, and the officer reasonably believes that offering the test would be futile, an officer is not required to do so.⁸ The required notice may be properly given by an officer other than the arresting officer, such as where the defendant is arrested by one officer, but the notice is given by a second officer while the defendant is being transported to a police station for testing.⁹

Practice Tip:

A prima facie showing that the proper notification was given to the driver may be made by presenting the arresting officer's certification and order of suspension, along with an advice of rights form, where both items are signed by the motorist.¹⁰

When an officer is aware that the person he or she is arresting for DUI holds a commercial vehicle operator's license, the officer must inform the arrestee, at the time of his or her arrest, of the commercial vehicle provisions of the implied consent law, or that person's driver's license cannot be suspended under the implied consent law,¹¹ though there is authority to the contrary.¹² On the other hand, an officer who delivers the commercial vehicle warnings to an arrestee who does not have a commercial license does give a warning that fulfills the notice requirements of such statutes.¹³

CUMULATIVE SUPPLEMENT

Cases:

Since police department's informed consent form, informed arrestee only that sanctions might result for refusal to submit to chemical testing and did not explain what the potential sanctions were, law enforcement had to conduct a more detailed advisement in compliance with implied consent law before sanctions could be imposed in operating vehicle under the influence of intoxicants case; implied consent law required that arrestee be informed of the sanctions which could apply, not simply that unspecified sanctions might exist. [Haw. Rev. Stat. § 291E-15](#). [State v. Hosaka](#), 472 P.3d 19 (Haw. 2020).

Requirements of statute, stating that arrestee must be given opportunity to refuse to submit to chemical testing and, if arrestee refuses, then arrestee must be informed of the specific sanctions that can result and asked whether he still refuses testing, are only triggered if arrestee, in operating vehicle under influence of intoxicants case, initially refuses testing, and they do not apply

to arrestees who, choose not to withdraw their consent to chemical testing when first asked. [Haw. Rev. Stat. § 291E-15](#). [State v. Hosaka](#), 472 P.3d 19 (Haw. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Luk v. Com.](#), 421 Mass. 415, 658 N.E.2d 664 (1995); [Proulx v. Director, New Hampshire Div. of Motor Vehicles](#), 154 N.H. 350, 910 A.2d 1208 (2006); [In re Smith](#), 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243 (2008); [State v. Sutton](#), 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).
- 2 [Thompson v. Department of Motor Vehicles](#), 107 Cal. App. 3d 354, 165 Cal. Rptr. 626 (5th Dist. 1980); [Harrington v. Tofany](#), 59 Misc. 2d 197, 298 N.Y.S.2d 283 (Sup 1969); [State v. Sutton](#), 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).
- 3 [Olson v. State](#), 260 P.3d 1056 (Alaska 2011) (police officer had no obligation under the implied-consent law to inform the defendant that, due to his prior record, a conviction for refusal to submit to a chemical test would be a felony); [Chancellor v. Dozier](#), 283 Ga. 259, 658 S.E.2d 592 (2008) (lifetime disqualification from having a commercial driver's license).
- 4 [Grogg v. Com., Dept. of Transp., Bureau of Driver Licensing](#), 79 A.3d 715 (Pa. Commw. Ct. 2013), judgment entered, 69 A.3d 779 (Pa. Commw. Ct. 2013).
- 5 [State v. Marquez](#), 202 N.J. 485, 998 A.2d 421 (2010).
- 6 [Sweeney v. Tofany](#), 30 A.D.2d 934, 293 N.Y.S.2d 876 (4th Dep't 1968); [Peppelman v. Com.](#), 44 Pa. Commw. 262, 403 A.2d 1041 (1979).
- 7 [Morphew v. Department of Motor Vehicles](#), 137 Cal. App. 3d 738, 188 Cal. Rptr. 126 (1st Dist. 1982); [Department of Public Safety v. Weinrich](#), 263 N.W.2d 690 (S.D. 1978).
- 8 [State v. Entzel](#), 116 Wash. 2d 435, 805 P.2d 228 (1991).
- 9 [Werner v. Department of Public Safety](#), 288 N.W.2d 82 (S.D. 1980).
- 10 [Motor Vehicle Admin. v. Karwacki](#), 340 Md. 271, 666 A.2d 511 (1995).
- 11 [State v. Geraldson](#), 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).
- 12 [Robinson v. Kansas Dept. of Revenue](#), 37 Kan. App. 2d 425, 154 P.3d 508 (2007) (an officer was not required to advise the driver of a noncommercial vehicle, holder of a commercial driver's license, that if he failed a sobriety test or if he refused testing, his commercial driver's license could be suspended for one year); [Escarcega v. State ex rel. Wyo. Dept. of Transp.](#), 2007 WY 38, 153 P.3d 264 (Wyo. 2007).
- 13 [Village of Elm Grove v. Landowski](#), 181 Wis. 2d 137, 510 N.W.2d 752 (Ct. App. 1993).

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